point in such a protest as she was in any event not entitled to any inheritance in the mother's estate. He would however charge the appellant with lack of foresight, expecting her to provide for the future when the father died. Another reason has to be quoted to show its insubstantiality: "it was strange why the respondents who were the legitimate issues of the said Ng Chiew and Sooi Moi (sic) would want to disown their own flesh and blood and had denied that the applicant had lived with them unless there was bad blood between them or between the applicant and her parents."

For myself, what I felt strange about and would welcome an explanation for, is not that the appellant could be the legitimate child in the circumstances so far disclosed but that the two youngest sons Ng Chow Lin and Eng Ah Wing particularly the latter, could be the children born to Soo Mooi. If as the extract of the registration of her death showed, she died in 1961 at the age of 59 leaving Ng Chow Lin and Eng Ah Wing at the date of her death aged 8 and 3, this must mean that Soo Mooi gave birth to them in 1953 and 1958 when she was aged 51 and 56 respectively.

Finally the learned judge rejected the affidavit of Wan Chong because the deponent did not know the name of the mother. It is perhaps unfair to the learned judge and unfortunate that this case involving Chinese habits should be set before him. His duties were in no way lightened by the fact that the legal advisers handling this case were of another ethnic origin. But it is the commonest thing among the Chinese to call each other by assumed relationships so that in the result they do not know each other's real name. I therefore do not think that the ignorance of the mother's name is sufficient ground by itself to reject his affidavit out of hand.

And in this connection, it will be appropriate here to note that Soo Mooi is a name without a surname. It means only Soo Girl or more elegantly Miss Soo. For a boy, the tag is "Chai" or "Chye." It is therefore not beyond the realms of impossibility or even improbability that the Chui Su in the Registration of Birth or Cho Siw in the Certificate of Birth became familiarised to Soo Mooi, and Chui Su may be Girl or Miss Su with the surname omitted. I rather wonder what the birth certificates of the respondents will reveal as to the spelling of the name of their mother or what the N.R.I.C. of the mother will show. There is on the record ground for believing that the truth can be discovered therein. The wife of Ng Chiew died on October 9, 1961; the grant for the land was issued in this name of Soo Mooi. It is necessary for the Letters of Administration to be applied for in the estate of Soo Mooi, but it does not necessarily follow that the name of the mother is certainly spelt as Soo Mooi in the birth certificates of the respondents. And if it is not so, that would be an explanation in favour of the appellant and a reason why the summary rejection of the appellant's application at this stage of the proceedings, is with respect, unsound. For myself I do not think that the affidavit evidence adduced hitherto and the rationalization therefrom justify the order made.

The appellant could have founded her claim on an action but quite understandably from a not unpraiseworthy desire to save costs, particularly having regard to the smallness of the estate, applied by Originating Summons, basically, to be added as a beneficiary. She possibly did not anticipate the opposition she met with, but having regard to it, it should have become obvious then that an Originating Summons was not a convenient medium to try disputed questions of fact, and that the proper order would be not to dismiss the application, but to stand it down and to make a further order for an action, *inter alia*, for a declaration of her status.

For the reasons set out, I would allow the appeal, set aside the order of the High Court and substitute for it an order that the Originating Summons be stayed and that the appellant commences an action as plaintiff, with the respondents as defendants. There will be a further order that if the action is not commenced within six weeks from the date hereof, the application to intervene will be dismissed with costs.

I now come to the question of the costs of the appeal and of the proceedings in the High Court. It is very obvious that if the normal order of costs to follow the event is made and there is nothing in the conduct of the appellant to deprive her of her costs, there will be hardly anything left over from this small estate for the respondents to resist the action to come. However, in all the circumstances of the case, I would order that the costs of this appeal and of the proceedings in the High Court should follow the action. The deposit by the appellant is to be returned to her.

Lee Hun Hoe C.J. (Borneo) and **Wan Suleiman F.J.** concurred.

Appeal allowed.

Solicitors: *H.Y. Lee & Co.; Maxwell, Kenion, Cowdy & Jones.*

PANG BROTHERS MOTORS SDN. BHD. v. LEE AIK SENG

[A.C.J. (Abdul Razak J.) October 16, 1976]
[Kuala Trengganu — Civil Appeal No. 1 of 1976]

Hire Purchase — Instalments in arrears — Repossession of car — Notice — Whether there was sufficient compliance with s. 15(1) of Hire Purchase Act.

A car was taken by the respondent on hire purchase with appellant. On failure of the respondent to pay the instalments due under the said agreement, the appellant issued a notice under section 15(1) of the Hire Purchase Act. The respondent did not comply with the notice and the vehicle was repossessed. Consequently the respondent filed a writ against the appellant claiming that the repossession was illegal. The President, Sessions Court gave judgment in favour of the respondent and the appellant appealed.

Held, dismissing the appeal: (1) there was a doubt as to whether the notice was in fact served;

(2) section 15 clearly specifies that the period shall not be less than 21 days after the service of the notice before the seizure could take place. However, the date specified in the notice was 2 days short of the statutory minimum and the notice was therefore bad in law.

CIVIL APPEAL.

S.P. Chandra for the appellant.

Lee Leng Guan for the respondent.

Abdul Razak J. This is an appeal against the decision of the President Sessions Court given on February 3, 1976 where he gave judgment for the respondent/plaintiff.

The facts are quite simple. A car was taken by the respondent/plaintiff on hire purchase with the appellant/defendant firm. According to the appellant/defendant, the hirer i.e. the respondent/plaintiff failed to pay the instalments due under the hire purchase agreement. In fact it was alleged two instalments were in arrears amounting to $659.09. The appellant/defendant then issued the necessary notice under section 15(1) of the Hire Purchase Act and failing compliance, the vehicle was repossessed. Consequently, the respondent filed the necessary writ against the appellant saying that the repossession was illegal. The President Sessions Court held the case in his favour ordering the car to be returned. He also awarded special and general damages at $463 and $1,800 respectively.

Before me, the appellant said that the learned President was wrong in his decision. Counsel argued that there has been compliance with section 15 of the Hire Purchase Act regarding the sending of the notice.

Suffice it for me to say having heard the appellant and the respondent that the grounds on which the learned President acted against the appellant seem to be well-founded. Firstly, there was a doubt whether the notice under section 15 was in fact sent on March 1, 1975 to Johore Bharu at the last known address of the respondent because according to DW2, the appellant's director, he sent the notice on the given date from the Malacca Head Office. But apparently a notice was also sent from the Johore Bharu branch on the given date. A receipt for the latter, D4, was adduced which showed that the mail was despatched to the respondent on March 1, 1975. But the question is what was the mail? This must have affected the President's mind. DW2 never corrected his evidence that he did not in fact send the notice from Malacca. Because of the apparent existence of these two notices there would appear to be a doubt as to whether the letter sent by the office boy at Johore Bharu was in fact a notice under section 15. There was another fact to corroborate the doubt. According to DW2, normally he would not send a reminder or reminders if the notice for repossession under section 15 had already been sent. But he admitted he did send reminders to the respondent even after the 1st of March. One will also note that the letter P5 which the appellant sent to the respondent was an A/R Registered letter. The question is why had they resorted to do so if they had sent the notice earlier under a Registered Letter merely, especially as counsel had contended that was all that the law required. It seems to suggest that the earlier letter had not reached the respondent at his proper address. Another fact is also noteworthy. The car had been returned to the respondent although there was a clear threat by the respondent earlier to institute proceedings against the appellant for illegal repossession. It is rather strange that they had opted to return it if they had acted to repossess the vehicle in accordance with the law and procedure.

Secondly, there has clearly been a failure on the part of the appellant to comply with the requirements of section 15(1) in sending the notice purportedly under it. The section reads:

> "Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there had been two successive defaults of payments or a default in respect of the last payment and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice."

The section clearly specifies that the period of notice shall be not less than 21 days after the service of the notice before seizure could take place. Obviously it meant that the period specified in the notice for the owner to call upon the hirer to make final payment before seizure must be 21 days which taking the 1st to be the supposed date of service, expires on the 22nd of March. This must be so, otherwise one does not see the purpose for the 21 days requirement. However, the date specified in the notice D2 was the 20th of March which was short of 2 days for the statutory minimum number of days. The notice D2 was therefore bad in law even if served and its effect was therefore null and void.

As to the question of damages it was urged by the appellant that the claim for special damages cannot wholly be sustained because items (a), (b) and (c) in the particulars of special damages were denied by the appellant. But, with respect, that submission was made in the face of the appellant's own admission of their liability to those items of damages which they gave in P(6). There was no evidence to show that P(6) was not properly taken from them.

In the circumstances I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *S.F. Pang & Chandra; Lee & Co.*

UNITED KENGSOON FINANCE v. SHARIKAT KURUAK SAWMILL SDN. BHD.

[A.C.J. (Abdul Razak J.) October 16, 1976]

[Kuala Trengganu — Civil Appeal No. 5 of 1976]

Practice & Procedure — Memorandum of retainer — Failure to file — Subordinate Courts Rules, 1950, O.7 r.1.

The appellant, a company dealing in hire-purchase vehicles, lent a car on hire-purchase to the respondent. The respondent defaulted in payment and the appellant repossessed the car. The respondent then issued an writ alleging illegality of the seizure. On the date mentioned in the writ, the appellant's solicitor was absent. Instead, a solicitor purporting to be the agent for the appellant's solicitor appeared on his behalf. The respondent's counsel was present. The President, Sessions Court held that the appellant's solicitor had no *locus standi* as the appellant had failed to file his memorandum of retainer under Order 7 rule 1 of the Subordinate Courts Rules. As the appellant was absent, he gave judgment for the respondent.

Held, allowing the appeal: although ordinarily Order 7 rule 1 of the Subordinate Court Rules should be construed